

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

MIKE FINNIGAN, KENNETH BUCHBINDER,  
BRIAN McCARTNEY, TYRONE VILLACIS, LUIS  
PICHARDO, and KRISTIN SERKOWSKI,  
*individually and on behalf of all others similarly  
situated,*

Plaintiffs,

v.

CANON U.S.A., INC.,

Defendant.

Case No.: 1:20-cv-06239-AMD-SJB

ANDRE SAMUEL HAMID

and

AMY LYNN HAMID,

*on behalf of themselves and all others similarly  
situated,*

Plaintiffs,

vs.

CANON, U.S.A., INC., a New York corporation,  
CANON SOLUTIONS AMERICA, INC., a New  
York corporation, CANON SOFTWARE  
AMERICA, INC., a New York corporation,  
CANON INFORMATION AND IMAGING  
SOLUTIONS, INC., a New York corporation,  
CANON FINANCIAL SERVICES, INC., a New  
Jersey corporation, CANON MEDICAL  
COMPONENTS U.S.A, INC., a California  
corporation, CANON INFORMATION  
TECHNOLOGY SERVICES, INC., a Virginia  
corporation, and NT-WARE USA, INC.,  
a Delaware corporation,

Defendants.

Case No.: 1:20-cv-06380-AMD-SJB  
(Related Case)

## **STIPULATION TO CONSOLIDATE ACTIONS AND SET SCHEDULING DEADLINES**

Pursuant to Rule 42 of the Federal Rules of Civil Procedure, the below referenced parties stipulate and represent as follows:

WHEREAS, there are two (2) related proposed class actions pending in the United States District Court for the Eastern District of New York against Canon U.S.A., Inc. (“Canon”): *Finnigan, et al. v. Canon U.S.A., Inc.*, Case No.: 1:20-cv-06239-AMD-SJB (“*Finnigan*”), filed December 23, 2020 and pending before the Honorable Ann M. Donnelly; and *Hamid v. Canon U.S.A., Inc. et al.*, No. 1:20-cv-06380-AMD-SJB (“*Hamid*”), filed December 31, 2020 and also pending before the Honorable Ann M. Donnelly (both referred to as the “Related Actions”);

WHEREAS, Plaintiffs in the Related Actions (“Plaintiffs”) allege that a data breach occurred at Canon, which they further allege held in its possession the personally identifiable information (“PII”) of Plaintiffs and putative class members (the alleged “Data Breach”) and for which Plaintiffs seek damages and equitable relief arising out of the alleged Data Breach;

WHEREAS, Plaintiffs agree that consolidation is appropriate under **Federal Rule of Civil Procedure 42(a)** because the Related Actions involve common questions of law or fact, specifically, the cases both name Canon U.S.A., Inc.,<sup>1</sup> arise from the same events and assert overlapping claims and putative classes;

WHEREAS, Plaintiffs agree that Defendants’ lack of objection to procedural consolidation of the Related Actions in this Court is without prejudice to any of Defendants’ substantive or procedural rights, remedies, defenses, objections, or legal arguments (including, for the sake of clarification and without limitation, those related to service of process or personal jurisdiction);

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<sup>1</sup> Plaintiffs in *Hamid* also name several additional related defendants, but the cases otherwise have considerable overlap.

WHEREAS, Plaintiffs agree not to argue that by entering into this stipulation or acting in conformance with its terms, Defendants have in any way waived or acted in any way inconsistent with any right, remedy, defense, objection or legal argument;

WHEREAS, subject to the provisions described above, Defendants do not oppose procedural consolidation of the Related Actions under **Fed. R. Civ. Proc. 42(a)** and Local Rule 13, while expressly reserving each and all of their rights, remedies, defenses, objections, and legal arguments;

WHEREAS, Plaintiffs and Defendants (collectively, “the Parties”) have met and conferred, and because Plaintiffs’ expressed intent is to file a Consolidated Complaint and assert claims under the laws of multiple states, the parties agree to the briefing schedule and expanded page limitations outlined below with respect to Defendants’ response to the forthcoming Consolidated Complaint;

NOW THEREFORE, the Parties through their respective counsel and subject to the Court’s approval hereby stipulate and agree that:

1. The *Finnigan* and *Hamid* actions currently pending in this District, and any other action arising out of the same or similar operative facts now pending or hereafter filed in, removed to, or transferred to this District shall be consolidated for pre-trial purposes pursuant to **Fed. R. Civ. P. 42(a)** before the Honorable Ann M. Donnelly (hereafter the “Consolidated Action”).

2. All papers filed in the Consolidated Action shall be filed under Case No. 1:20-cv-06239-AMD-SJB, the number assigned to the first-filed case, and shall bear the following caption:

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

*IN RE: CANON U.S.A. DATA BREACH* Master File No. 1:20-cv-06239-AMD-SJB  
*LITIGATION*

This Document Relates To:

3. The case file for the Consolidated Action will be maintained under Master File No.: 1:20-cv-06239-AMD-SJB. When a pleading is intended to apply to all actions to which this Order applies, the words “All Actions” shall appear immediately after the words “This Document Relates To:” in the caption described above. When a pleading is not intended to apply to all actions, the docket number for each individual action to which the paper is intended to apply and the last name of the first-named plaintiff in said action shall appear immediately after the words “This Document Relates To:” in the caption identified above, *e.g.*, “1:20-cv-06239-AMD-SJB (Finnigan)”.

4. Any action subsequently filed in, transferred to or removed to this Court that arises out of the same or similar operative facts as the Consolidated Action, shall be consolidated with the Consolidated Action for pre-trial purposes. The parties shall file a Notice of Related Action pursuant to Local Rule 13 whenever a case that should be consolidated into this action is filed in, transferred to, or removed to this District.

5. If the Court determines that the case is related, the clerk shall:
- a. Place a copy of this Order in the separate file for such action;
  - b. Serve on Plaintiffs’ counsel in the new case a copy of this Order;
  - c. Direct that this Order be served upon defendants in the new case; and
  - d. Make appropriate entry in the Master Docket.

6. Any attorney who has filed an action in this litigation may file an application for appointment as interim class counsel or other designated counsel either individually or as part of a proposed leadership structure. All applications shall be limited to 15 pages and must be e-filed in the Master File No. 1:20-cv-06239-AMD-SJB, no later than 5:00 p.m. Eastern Time within three (3) business days after the date the Court enters the Order approving this Stipulation. A response of no more than five (5) pages shall be allowed and must be filed no later than 5:00 p.m. Eastern Time within seven (7) business days after the date of filing of the aforesaid application for appointment as interim class counsel or other designated counsel. The Court may hold a hearing on the applications or appoint interim counsel or other designated counsel based on timely written submissions only;

7. Plaintiffs shall file a Consolidated Complaint no later than thirty (30) days following the entry of an order appointing interim class counsel or other designated counsel.

8. Any response to the Consolidated Complaint shall be due within thirty (30) days from the filing of the Consolidated Complaint. Should Defendants intend to file a motion to dismiss, the Parties will comply with the pre-motion conference procedure set forth in Judge Ann Donnelly's Individual Practices and Rules with the following clarifications and/or adjustments:.

(a) To the extent Defendants wish to file a motion to dismiss under Rule 12, Defendants shall file and serve a letter no longer than three (3) pages requesting a pre-motion conference and setting out the bases for the anticipated motion within thirty (30) days from the filing of the Consolidated Complaint;

(b) Should Defendants file a request for a pre-motion conference in accordance with Paragraph (a) above, Plaintiffs shall serve and file a letter response, not to exceed three (3) pages, within seven (7) days of service of the notification letter;

(c) Should the Court permit Defendants to file a motion to dismiss the Consolidated Complaint under Rule 12, Defendants shall file and serve said motion within thirty (30) days of the Court granting permission to Defendants to file a motion to dismiss, with any memorandum of law limited to thirty-five (35) pages without further leave of Court;<sup>2</sup>

(c) Any opposition to a motion to dismiss shall be filed and served within thirty (30) days of the filing of the motion to dismiss and shall be limited to thirty-five (35) pages without further leave of Court;

(d) Any reply brief shall be filed and served within fourteen (14) days of the opposition and shall be limited to twenty (20) pages;

9. Plaintiffs agree that by Defendants entering into this stipulation or acting in conformance with its terms, Defendants have not waived or acted in any way inconsistent with any right, remedy, defense, objection or legal argument (including, for the sake of clarification and without limitation, those related to service of process or personal jurisdiction).

**IT IS SO STIPULATED.**

Dated: January 20, 2021

**Counsel for Defendants**

/s/ Eric R. Fish  
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<sup>2</sup> The parties understand that the page limitations for the motion to dismiss briefing set forth in this Stipulation are more than the limitations set forth in Judge Donnelly's Individual Practices and Rules. The parties agree, however, that such additional page limitations are appropriate based on the consolidated nature and complexity of the within action.

**Counsel for Plaintiff Finnigan**

/s/ Gary S. Graifman

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**Counsel for Plaintiff Hamid**

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**IT IS SO ORDERED:**

**DATED:** January 25, 2021

/s/ Sanket J. Bulsara

HONORABLE SANKET J. BULSARA  
**UNITED STATES MAGISTRATE JUDGE**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of January, 2021, I caused a true and correct copy of the foregoing **STIPULATION TO CONSOLIDATE ACTIONS AND SET SCHEDULING DEADLINES** with the Clerk of the Court for the Eastern District of New York via the Court's CM/ECF system, which will send notification of such filing to the counsel of record in the above-captioned matters.

Date: January 20, 2021

/s/ Gary S. Graifman